

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Peter Magnone,

Civil Action No.

Petitioner-Landlord,

NYCCC
Index No. L&T
07N092992

-against

Jandy Warner,
Respondent-Tenant.

-----X

NOTICE OF REMOVAL

A. M. Bentley, P.C.
SDNY Bar # AB1853
116 West 72nd Street
New York NY 10023
(212) 459-4067

UNITED STATES DISTRICT COURT
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-----X

Peter Magnone,

Petitioner-Landlord,

-against

Jandy Warner,

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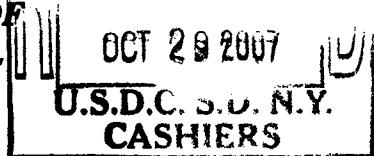
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07 CIV 9605

Civil Action No.

NYCCC
Index No. L&T
07N092992

**NOTICE OF
REMOVAL**



To the Honourable Judges of the United States District Court for
the Southern District of New York:

Removing party, Jandy Warner, by her undersigned attorney
A. M. Bentley, P.C., respectfully shows to this Court:

1. Petitioner, through an attorney/debt collector, mailed respondent a validation notice of an alleged debt as that term is normally construed pursuant to Title 15 United States Code § 1692g(a) dated October 8, 2007 ("A").

2. Respondent, upon receipt thereof, immediately disputed the debt by faxed letter to petitioner's debt collector/attorney dated and transmitted to petitioner on October 15, 2007 ("B") which dispute was received electronically by petitioner's debt collector the same day ("C") and further mailed petitioner's debt collector the original of the dispute letter by priority mail posted (by me) on October 15, 2007 ("D") which letter was delivered to petitioner's debt collector on October 17, 2007 ("E").

3. Notwithstanding the foregoing, petitioner instituted a collection proceeding against respondent ("F") by petition authored, executed and verified not by petitioner, but by petitioner's debt collector/attorney, dated October 16, 2007, one day after the attorney/debt collector had received the dispute letter by fax, and one day prior to his receipt by priority mail of the original dispute letter, and, as is more germane here, prior to (and continuing bereft of) the attorney/debt collector's validation of the debt.

4. The collection proceeding ("F") above described is the proceeding herein captioned and noticed removed to this Court.

5. Neither petitioner, nor his debt collector/attorney, has answered respondent's dispute letter ("B"), nor has either forborne from collection activity against respondent ("F") since petitioner's receipt of such dispute.

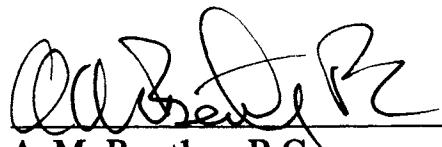
6. Petitioner is thereby in violation of the FDCPA. *Romero v. Heiberger & Assoc.*, 163 F.3d 111 (2d Cir. 1998).

7. Petitioner has therefore failed to fulfill one or more necessary conditions precedent precatory to instituting a summary proceeding to oust under New York law and the Civil Court of the City of New York is without jurisdiction to entertain the proceeding herein removed.

8. Exhibits "A" and "F" hereto contain all process, pleadings and orders received by respondent as are contemplated by Title 28 United States Code 1446(a).

9. The grounds for removal are that the maintenance of the proceeding noticed removed herein under the circumstances above-described is violative of federal statutory law.

Dated:
New York, NY
October 29, 2007


A. M. Bentley, P.C.
SDNY Bar # AB1853
116 West 72nd Street
New York NY 10023
(212) 459-4067


A

GREEN & COHEN, P.C.
ATTORNEYS AND COUNSELORS AT LAW
319 East 91st Street, Professional Suite
NEW YORK, NY 10128
Telephone (212) 831-4400
Fax No. (212) 831-8390

To: JANDY WARNER

Date: October 8, 2007

This firm has been retained to collect a debt for rent arrears totaling \$14,625.00
Any information obtained will be used for that purpose.

The below named creditor claims that you owe rent arrears as specified. You have 30 days from receipt of this notice to dispute the debt in writing. If you fail to do so, we will assume the debt to be valid. If you timely notify us, in writing, that you do dispute the debt, we will obtain verification of the debt and mail same to you. Upon your written request made within thirty (30) days of the receipt of this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

This opportunity to dispute the debt is separate from any response that you are required to make or any action you are required to take with respect to any other legal notices you receive. Please respond to any legal notices you may receive within the time frames set forth in those notices.

Creditor: PETER MAGNONE

JANDY WARNER
312 WEST 88TH STREET, APT: 5F
NEW YORK, NY 10024

MAGNON-312-5F

TO: JANDY WARNER
312 WEST 88TH STREET, APT. 5F
NEW YORK, NY 10024

PLEASE TAKE NOTICE, that you are hereby required to pay your landlord, PETER MAGNONE on or before October 15, 2007, the sum of \$14,625.00 for rent described in Schedule "A", below, for the premises known as Apt # 5F, and located at 312 West 88th Street, New York, NY 10024, now occupied by you as tenant, or in the alternative, deliver possession of said premises to the undersigned. If you fail to pay or to give up possession of the premises the landlord will commence summary proceedings against you to recover possession of the premises.

Dated: New York, New York

October 8, 2007

PETER MAGNONE
(Owner and Landlord)


PETER MAGNONE
VIRASTREALTY

SCHEDULE "A"

Base Rent

OCT07 \$1,625.00
SEP07 \$1,625.00
AUG07 \$1,625.00
JUL07 \$1,625.00
JUN07 \$1,625.00
MAY07 \$1,625.00
APR07 \$1,625.00
MAR07 \$1,625.00
FEB07 \$1,625.00

MAGNON-312-5F

B

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Creditor: PETER MAGNONE

 COPY

JANDY WARNER
 312 WEST 88TH STREET, APT: 5F
 NEW YORK, NY 10024

MAONON-312 .5F

WARNER → RECEIVED THIS NOTICE ON 10/11/07
 I DISPUTE THE VALIDITY OF THE DEBT OR
 A PORTION THEREOF. OBTAIN VERIFI-
 CATION OF THE DEBT AND MAIL ME SAME.
 PROVIDE NAME AND ADDRESS OF ORI-
 GINAL CREDITOR. THANKS, A. BENTLEY.
 RETAINED COUNSEL TO ALLEGED DEBTOR
 DATE 10/11/07 INITIALS *AB*

FRESH →

ANTHONY M. BENTLEY
 116 WEST 72ND STREET
 NEW YORK NY 10023-3315
 COUNSEL TO WARNER

C

Internal Modem Edit Fax Jobs Window Help

ANSI

AMB

2007-10-15 19:04:51.pdf

Anthony Bentley 19 08 23 - 0400 Mon Oct 15 07

File Results Admissions

JANDY WARNER
312 WEST 88TH STREET, APT: 5F
NEW YORK, NY 10024

MAONON-312 -SF

URGENT! RECEIVED THIS NOTICE ON 10/15/07
I DISPUTE THE VALIDITY OF THE DEBT OR
A PORTION THEREOF. OBTAIN VERIFICA-
TION OF THE DEBT AND MAIL ME SAME.
PROVIDE NAME AND ADDRESS OF ORIGI-
NAL CREDITOR. THANKS. A. BENTLEY.
RETAINED COUNSEL TO ALLEGED DEFOLOR
DATE OF PLAINTIFFS ATTORNEY

ANTHONY M. BENTLEY
116 WEST 72ND STREET
NEW YORK NY 10023-3315

COURT TO WARNER

Name	Fax Number	State
2002-10-15-19.04.51 1212331-3390 Finished	1045037 2:07 PM	10/14/07 11:10 AM
Claim Faxed	1-800-359-5971 Finished	10/14/07 11:10 AM
2007-09-06-05-30-37 1212331-3084 Finished	9/6/07 5:35 AM	9/6/07 5:35 AM
DPS Complaint Form#2	1518-227-5502 Finished	9/5/07 11:05 PM
Kicsoft Word N...	1516-739-2010 Cancelled	8/30/07 3:34 PM
2007-08-21-21-37-42 1518-472-8502 Cancelled	8/29/07 2:12 AM	8/29/07 2:12 AM
Microsoft Word (re...)	1-675-562-7894 Cancelled	8/29/07 2:03 AM
2007-08-21-13-32-01 12128772868 Finished	8/21/07 1:44 PM	8/21/07 1:44 PM

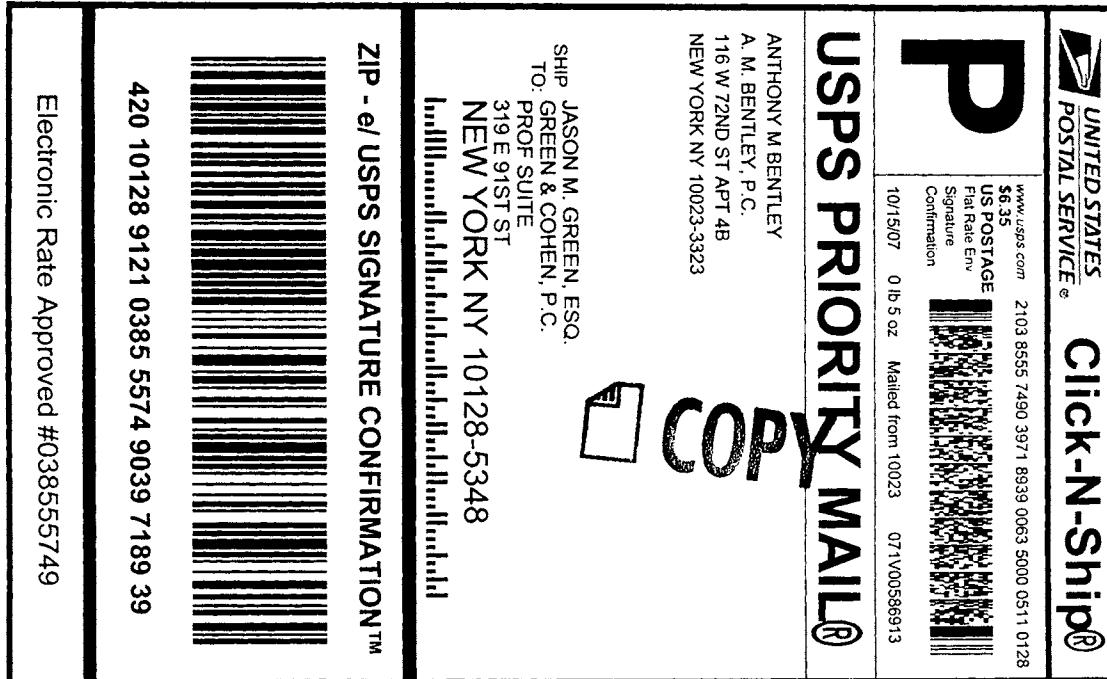
RECEIVED THIS NOTICE ON 10/11/07
LETTERLAW DISPUTES THE VALIDITY OF THE DEBT OR
DISPUTE THE VALIDITY OF THE DEBT OR
LETTERLAW, INC., "AMERICAN
LETTERLAW, INC., "AMERICAN

MAONION-J12 -SF

RECEIVED THIS NOTICE ON 10/11/07
TO DISPUTE THE VALIDITY OF THE DEBT OR
A PORTION THEREOF, OBTAIN VERIFICA-
TION OF THE DEBT AND MAIL ME SAME.
PROVIDE NAME AND ADDRESS OF ORI-
GINAL CREDITOR. THANKS. A. BENTLEY.
RETAINED COUNSEL TO ALLEGED DEFECTOR
DATE, 10/11/07 INITIALS AB

—ANTHONY M. BENTLEY
116 WEST 72ND STREET
NEW YORK NY 10023-3315
CONSEN TO WALTER

D



Instructions

1. Each Click-N-Ship® label is unique. Labels are to be used as printed and used only once. DO NOT PHOTO COPY OR ALTER LABEL.
2. Place your label so it does not wrap around the edge of the package.
3. Adhere your label to the package. A self-adhesive label is recommended. If tape or glue is used, DO NOT TAPE OVER BARCODE. Be sure all edges are secure.
4. To mail your package with PC Postage®, you may schedule a Carrier pickup online, hand to your letter carrier, take to a Post Office™, or drop in a USPS collection box.
5. Mail your package on the "Ship Date" you selected when creating this label.

ZIP - e/ USPS SIGNATURE CONFIRMATION™



420 10128 9121 0385 5574 9039 7189 39

Electronic Rate Approved #038555749

Cut on dotted line.

Online Label Record (Label 1 of 1)

Signature Confirmation™ Number:
2103 8555 7490 3971 8939

Paid Online	Priority Mail® Postage: \$4.60
Transaction #: 100250191	Signature Confirmation: \$1.75
Print Date: 10/15/2007	(Electronic Rate)
Ship Date: 10/15/2007	Total: \$6.35
Weight: 0.5 oz	

From: ANTHONY M. BENTLEY
A. M. BENTLEY, P.C.
116 W 72ND ST APT 4B
NEW YORK NY 10023-3323

To: JASON M. GREEN, ESQ.
GREEN & COHEN, P.C.
PROF SUITE
319 E 91ST ST
NEW YORK NY 10128-5348

* Regular Priority Mail rates apply. Signature Confirmation service electronic fee required. Delivery information is not available by phone for the electronic rate. Refunds for unused postage paid labels can be requested online 10 days from the print date. A copy of the recipient's signature will be faxed or mailed upon request by visiting the web site listed below or calling 1-800-222-1811.



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Check the status of your shipment on the Track & Confirm page at www.usps.com

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Track & Confirm

Search Results

Label/Receipt Number: 2103 8555 7490 3971 8939
Detailed Results:

- Delivered, October 17, 2007, 12:08 pm, NEW YORK, NY 10128
- Electronic Shipping Info Received, October 16, 2007

[**< Back**](#)[Return to USPS.com Home >](#)[**\(Go > \)**](#)

Track & Confirm

Enter Label/Receipt Number.

Jandy FDCPA Dispute I

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [**\(Go > \)**](#)

Proof of Delivery

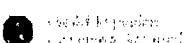
Verify who signed for your item by email, fax, or mail. [**\(Go > \)**](#)

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F

Civil Court of The City of New York County of NEW YORK Housing Part																									
PETER MAGNONE	Petitioner(s) <i>Landlord(s)</i>																								
JANDY WARNER <i>against</i>																									
Tenant(s)																									
<p>3. Respondent(s) are now in possession of said premises.</p> <p>4. The premises are the residence of the tenant(s) and the defendant(s) herein.</p> <p>5. The premises for which removal is sought was rented for Dwelling purposes and are described as follows:</p> <p>All Rooms, Apartment SF in the building known as 312 West 88th Street, New York, NY 10024, situated within the territorial jurisdiction of the Civil Court of the City of New York, County of NEW YORK.</p>																									
<p><u>Undertenant(s)</u></p> <p>312 WEST 88TH STREET</p> <p>Apt. 5F</p> <p>NEW YORK, NY 10024</p> <p>Amount Claimed: \$14,750.00</p> <p>DWELLING</p> <p>MAGNON-312-5i</p>																									
<p><u>PETITION NON-PAYMENT</u></p> <p>Notice of Petition served on _____</p> <p>Notice of Petition returned on _____</p> <p>Notice of Petition issued on _____</p> <p>Tenant appears on _____</p> <p>Tenant answers on _____</p> <p>Answer is _____</p> <p>Se: for Trial on _____</p> <p>Landlord notified on _____</p> <p>Sufficiency of answer referred to court _____</p> <p>Raises _____ issue</p>																									
<p>8. Said rent has been demanded from the tenant since same became due by FIVE day written notice, a copy of which, with proof of service is annexed.</p> <p>9. Respondent(s) have defaulted in the payments thereof and continue in possession of premises without permission after said default. The premises are a multiple dwelling and pursuant to the Housing Maintenance Code Article 41 there is a currently effective registration statement on file with the Office of Code Enforcement which designates the managing agent named below, a natural person over 21 years of age, to be in control of and responsible for the maintenance and operation of the dwelling.</p> <p>Agent PETER MAGNONE 122 WEST 81ST STREET, BSMT, NEW YORK, NY 10024 WHEREFORE petitioner requests a final judgment against respondent(s) for the rent demanded therein, awarding possession of the premises to petitioner landlord, and directing the issuance of a warrant to remove respondent(s) from possession</p> <p>PETER MAGNONE STATE OF NEW YORK, COUNTY OF NEW YORK. The undersigned affirms under penalty of perjury that he is one of the attorney's for the petitioner, that he has read the foregoing petition and knows the contents thereof; that the same are true to his own knowledge except as to matters stated upon his knowledge are statements and/or records provided by the petitioner, its agents and/or employees and contained in the file in the attorney's office. This verification is made pursuant to the provisions of RPAPL 741.</p> <p>October 16, 2007</p> <p style="text-align: right;">_____ Jason Green / Michael Cohen</p>																									
<p>Oct 07 LEGAL FEES</p> <table> <tbody> <tr> <td>\$125.00</td> <td>Oct 07 \$</td> <td>1,625.00</td> </tr> <tr> <td></td> <td>Sep 07 \$</td> <td>1,625.00</td> </tr> <tr> <td></td> <td>Aug 07 \$</td> <td>1,625.00</td> </tr> <tr> <td></td> <td>Jul 07 \$</td> <td>1,625.00</td> </tr> <tr> <td></td> <td>Jun 07 \$</td> <td>1,625.00</td> </tr> <tr> <td></td> <td>May 07 \$</td> <td>1,625.00</td> </tr> <tr> <td></td> <td>Apr 07 \$</td> <td>1,625.00</td> </tr> <tr> <td></td> <td>Mar 07 \$</td> <td>1,625.00</td> </tr> </tbody> </table>		\$125.00	Oct 07 \$	1,625.00		Sep 07 \$	1,625.00		Aug 07 \$	1,625.00		Jul 07 \$	1,625.00		Jun 07 \$	1,625.00		May 07 \$	1,625.00		Apr 07 \$	1,625.00		Mar 07 \$	1,625.00
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	May 07 \$	1,625.00																							
	Apr 07 \$	1,625.00																							
	Mar 07 \$	1,625.00																							

Oct 27 07 08:46P

Jandy Warner

(212) 724-3977

P. 4

GREEN & COHEN, P.C.
ATTORNEYS AND COUNSELORS AT LAW
319 East 91st Street, Professional Suite
NEW YORK, NY 10128
Telephone (212) 831-4400
Fax No. (212) 831-8390

To: JANDY WARNER

Date: October 8, 2007

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Creditor: PETER MAGNONE

JANDY WARNER
312 WEST 88TH STREET, APT: SF
NEW YORK, NY 10024

MAGNON-312-SF

Oct 27 07 08:45p

Jandy Warner

(212) 724-3977

P.3

TO: JANDY WARNER
312 WEST 88TH STREET, APT. 5F
NEW YORK, NY 10024

PLEASE TAKE NOTICE, that you are hereby required to pay your landlord, PETER MAGNONE on or before October 15, 2007, the sum of \$14,625.00 for rent described in Schedule "A", below, for the premises known as Apt # 5F, and located at 312 West 88th Street, New York, NY 10024, now occupied by you as tenant, or in the alternative, deliver possession of said premises to the undersigned. If you fail to pay or to give up possession of the premises the landlord will commence summary proceedings against you to recover possession of the premises.

Dated: New York, New York

October 8, 2007

PETER MAGNONE
(Owner and Landlord)


PETER MAGNONE
VIFAST REALTY

SCHEDULE "A"

Base Rent

OCT07 \$1,625.00
SEP07 \$1,625.00
AUG07 \$1,625.00
JUL07 \$1,625.00
JUN07 \$1,625.00
MAY07 \$1,625.00
APR07 \$1,625.00
MAR07 \$1,625.00
FEB07 \$1,625.00

MAGNON-312-5F

Oct 27 07 08:46p

Jandy Warner

(212) 724-3977

p.5

AFFIDAVIT OF CONSPICUOUS SERVICE

State of New York}
County of Nassau }

Client Ref. #: MAGNON-312-SF

I, Ragonat Khan, being duly sworn, depose and say: That deponent is not a party to this proceeding, is a licensed Process Server over 18 years of age and resides at Queens, New York.

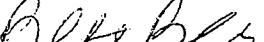
Deponent was unable to serve: JANDY WARNER tenant(s)/occupant(s) therein named by delivering a true copy thereof to said tenant(s)/occupant(s) personally at:

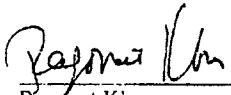
312 WEST 88TH STREET NEW YORK, NY 10024 APT: 5F on 10/11/07 at 10:48 AM.

Deponent affixed a true copy of the 5-Day Notice for each tenant/occupant upon a conspicuous part, to wit – the entrance door of said property.

Deponent was unable to find a person of suitable age and discretion willing to receive the same at this time or during a prior attempt made on 10/10/07 at 7:46 PM. Deponent served true copies of the above mentioned documents on each tenant/occupant at the property sought to be recovered, by depositing true copies of the same enclosed in a wrapper in the Post Office by Certified Mail and Regular First Class Mail within the State of New York on 10/11/07.

Sworn to before me on October 11, 2007


Beth Belfer
Notary Public, State of New York
No. 41-5000673
Qualified in Nassau County
Commission Expires August 17, 2010


Ragonat Khan
License # 1184166